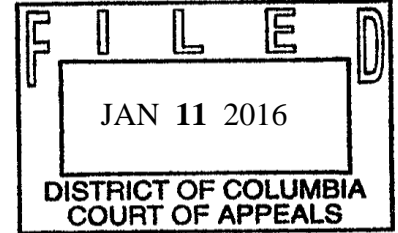


DISTRICT OF COLUMBIA COURT OF APPEALS

No. 14-AA-909

RONALD A. ARMSTEAD, JR., PETITIONER,

v.



DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES, RESPONDENT,

and

GREYHOUND LINES, INC., *et al.*, INTERVENORS.

Petition for Review of an Order of the
District of Columbia Compensation Review Board
(CRB-51-14)

(Submitted September 29, 2015)

Decided January 11, 2016)

Before THOMPSON and EASTERLY, *Associate Judges*, and NEBEKER, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: In August 2012, Petitioner Ronald A. Armstead, Jr. suffered a workplace injury to his back. Approximately one year later, Mr. Armstead filed a claim for partial permanent disability benefits under the Workers' Compensation Act;¹ he sought compensation for what his physician concluded was a 16% left-arm impairment.² Mr. Armstead's employer did not dispute a workplace injury to

¹ D.C. Code § 32-1501 to -1545 (2012 Repl.).

² Such an impairment would constitute a "schedule" injury under the District's workers' compensation scheme, *see* D.C. Code § 32-1508 (3)(A)-(U) (2012 Repl.), which relieves the claimant of the burden of having to prove lost
(continued...)

Mr. Armstead's back, which had eventually resolved, but challenged the existence of any causally related impairment to Mr. Armstead's arm. A Department of Employment Services Administrative Law Judge (ALJ) denied Mr. Armstead's claim after determining that he had not "met his burden of establishing that he sustained [a] 16% permanent partial impairment to [his] left upper extremity as a result of the injury he sustained on August 8, 2012."³ The Compensation Review Board (CRB) affirmed.

Mr. Armstead now asks this court to reverse the CRB decision affirming the ALJ's compensation order. He argues that reversal is warranted for two reasons: (1) the ALJ did not consider evidence of Mr. Armstead's impairment under the so-called "Maryland factors," listed in D.C. Code § 32-1508 (3)(U-i) (2012 Repl.): pain, weakness, atrophy, loss of endurance, and loss of function; and (2) the ALJ failed to accord the treating physician preference to opinions of Mr. Armstead's doctor, Dr. Fechter. Unpersuaded, we affirm.

The scope of our review in this case is limited. Unless we conclude that the CRB's decision was "arbitrary, capricious, or otherwise an abuse of discretion and not in accordance with the law," we must affirm. *White v. District of Columbia Department of Employment Services*, 120 A.3d 615, 617 (D.C. 2015). Within this framework, we do not reweigh the evidence, but instead examine the agency's legal conclusions to determine whether they flow rationally from factual findings supported by substantial evidence in the record. *See Reyes v. District of Columbia Department of Employment Services*, 48 A.3d 159, 164 (D.C. 2012). And although we are reviewing the CRB's decision, "we cannot ignore the compensation order which is the subject of the CRB's review." *Id.* (quoting *Georgetown Univ. Hosp. v. District of Columbia Department of Employment Services*, 916 A.2d 149, 151 (D.C. 2007)).

(...continued)

wages. *Brown v. District of Columbia Department of Employment Services*, 83 A.3d 739, 743 n.6 (D.C. 2014) (explaining that for schedule injuries, a worker is entitled to benefits "regardless of the actual wage loss the worker sustains as a result of the injury").

³ The ALJ preliminarily determined that Mr. Armstead was entitled to the presumption that his left-arm injury was medically causally related to his August 2012 workplace injury and that Mr. Armstead's employer had not rebutted this presumption.

Mr. Armstead first argues that the ALJ improperly disregarded evidence of Mr. Armstead's partial permanent disability based on his subjective reports of pain, weakness, loss of function, and loss of endurance. He points to his testimony at the evidentiary hearing in which he described "pain and numbness" in his left arm as well as a weakness in his left-hand grip. The CRB determined that the language of D.C. Code § 32-1508 (3)(U-i) which permits the consideration of a claimant's subjective reports, *see id.* ("may be utilized"), did not compel such consideration. Although our precedent strongly suggests that an ALJ may not disregard evidence of disability under the subjective Maryland factors,⁴ we need not address this question of statutory interpretation because the record reflects that the ALJ did consider Mr. Armstead's reports of pain, weakness, loss of function, and loss of endurance. She simply chose not to credit them.

Conveying her skepticism of Mr. Armstead's 16% partial permanent disability rating, the ALJ's compensation order quoted extensively from Mr. Armstead's testimony on cross-examination. The ALJ also relied on the reports of Mr. Armstead's treating physician, Dr. Fechter, which largely focused on Mr. Armstead's back condition and did not corroborate Mr. Armstead's reports of pain, numbness, weakness, and loss of mobility in his arm.⁵ Indeed, as the ALJ noted, "the only time [Mr. Armstead's] left extremity is mentioned by Dr. Fechter is in his first report of August 22, 2012⁶ and his last report of July 17, 2013[,] wherein

⁴ *See Negussie v. District of Columbia Department of Employment Services*, 915 A.2d 391, 398 (D.C. 2007) (explaining that ALJs are not bound by physicians' impairment ratings and have discretion under D.C. Code § 32-1508 (3)(U-i) to make disability percentage ratings using the Maryland factors); *Muhammad v. District of Columbia Department of Employment Services*, 774 A.2d 1107, 1113-14 (D.C. 2001) (holding that the ALJ erred by not considering evidence of disability under the Maryland factors).

⁵ The record includes fourteen reports from Dr. Fechter from August 22, 2012, to July 17, 2013. In every one of these reports, Dr. Fechter repeats the same observation: "Upper extremity neurologic examination including deep tendon reflexes and motor sensory examination is full and normal bilaterally. There are good distal pulses noted in the upper extremities bilaterally. The patient has good range of motion and no instability or significant tenderness of the upper extremities bilaterally."

⁶ In addition to the language discussed in note 5, *supra*, the report noted that Mr. Armstead's "[s]houlder mobility bilaterally is full and painless."

he [came] up with a permanent rating to the left extremity” but “referred only to the left shoulder and never mentioned [Mr. Armstead]’s hand or his grip.”

In short, the ALJ determined that Mr. Armstead’s left arm had no permanent partial disability under the Maryland factors. Because her determination flowed rationally from the substantial evidence in the record, we conclude that the CRB’s affirmance of the ALJ’s conclusion was not “arbitrary, capricious, or otherwise an abuse of discretion and not in accordance with the law.” *See White*, 120 A.3d at 617.

Mr. Armstead also argues that the ALJ disregarded the opinion of his treating physician. Again, the record does not support this argument. The ALJ relied heavily on Dr. Fechter’s reports, but these reports did not corroborate Mr. Armstead’s claim. To be sure, Dr. Fechter opined in his final report that, notwithstanding the absence of clinically verifiable disability under the American Medical Association’s standards,⁷ Mr. Armstead’s “additional subjective factors of pain, weakness, loss of endurance and loss of function entitle [him] to an additional 4% impairment for each of these for a total impairment of 16% to the left upper extremity.” But the ultimate determination regarding a disability rating is reserved to the ALJ, not the treating physician. *Cf. Negussie v. District of Columbia Department of Employment Services*, 915 A.2d 391, 398-99 (D.C. 2007) (explaining that since disability is a legal and economic concept, the ALJ has discretion in making disability determinations and is not limited to adopting a medical professional’s disability rating). Having discredited Mr. Armstead’s subjective reports of impairment, the ALJ likewise declined to endorse Dr. Fechter’s 16% partial disability rating which, she explained, could not be reconciled “with the total lack of complaints regarding the left arm through his course of treatment until the day of the [permanent partial disability] evaluation.”⁸ We conclude that substantial evidence in the record supports the CRB’s affirmance of the ALJ’s decision to discount Dr. Fechter’s disability rating.

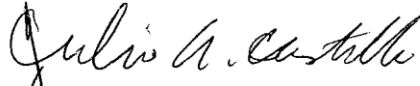
⁷ D.C. Code § 32-1508 (3)(U-i) lists both the American Medical Association’s Guides to the Evaluation of Permanent Impairment and five subjective factors as measures that “may be utilized” in making a disability determination.

⁸ An ALJ may reject a treating physician’s opinion if she “sets forth specific and legitimate reasons for doing so.” *Changkit v. District of Columbia Department of Employment Services*, 994 A.2d 380, 387 (D.C. 2010) (emphasis omitted).

For the foregoing reasons, the order of the CRB is

Affirmed.

ENTERED BY DIRECTION OF THE COURT:



JULIO A. CASTILLO
Clerk of the Court

Copies to:

Timothy Fitzpatrick
Program Analyst – Compensation Review Board

David M. Snyder, Esq.
Chasen & Boscolo
7852 Walker Drive – Suite 300
Greenbelt, MD 20770

Barry D. Bernstein, Esq.
Semmes, Bowen & Semmes
25 South Charles Street – Suite 1400
Baltimore, MD 21201

Todd S. Kim, Esq.
Solicitor General – DC